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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/715,805 | 11/18/2003 | Marc-Andre Valiquette | 2257-5A | 5187 |

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EXAMINER

NGUYEN, SON T

| | |
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| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/715,805 | Applicant(s) VALIQUETTE ET AL. pt | |
| | Examiner Son T. Nguyen | Art Unit 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9 & 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "said elongated" lacks prior antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 09009789A (herein JP789) in view of 4294037 (herein 037).

For claim 1, JP789 teaches a gardening system comprising a container 1 having a bottom wall and a side wall extending upwardly therefrom, a soil support insert 2-4 spaced from said bottom wall to define a space between said bottom wall and said soil support insert, at least one wall extending downwardly from said soil support member to define a cavity, a plurality of apertures 31 in said downwardly extending wall, water in said container (inherent to water the plant therein), and a soil 8 on top of said non-soil growing medium. However, JP789 is silent about an air-space between an upper

surface of said water and said soil support member, a non-soil growing medium within said cavity, said non-soil growing medium including mycorrhizal fungi.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an air-space between an upper surface of said water and said soil support member of JP789, depending on how much water is being watered in the container.

037 teaches employing a non-soil growing medium including mycorrhizal fungi. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a non-soil growing medium within said cavity, said non-soil growing medium including mycorrhizal fungi as taught by 037 in the gardening system of JP789, depending on what type of plant being grown therein because the fungi can enhance uptake of nutrient by the plant grown therein (abstract of 037).

For claim 2, JP789 as modified by 037 (emphasis on JP789) teaches wherein said apertures comprise a plurality of spaced apart slots 31 formed in said downwardly extending wall. Note, the definition of a slot from the Microsoft Bookshelf Basic Dictionary is a narrow opening; therefore, ref. 31 of JP789 is a narrow opening.

For claim 3, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the slots of JP789 as modified by 037 with width of between 1.5 and 3 mm, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 4, in addition to the above, 037 teaches peat or rockwool for a medium (col. 4, lines 42-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ vermiculite or any root growth promoting material that is environment friendly, hydrophilic, non toxic, imputrescible, inert and light as further taught by 037 for the non-growing medium of JP789 as modified by 037, depending on which type of plant grown therein and in order to be environmentally sound.

For claim 5, JP789 as modified by 037 (emphasis on JP789) teaches wherein there are provided a plurality of walls extending downwardly to thereby define a plurality of cavities (see fig. 1), each of said downwardly extending walls having a plurality of elongated slots formed therein.

For claim 6, JP789 as modified by 037 (emphasis on JP789) teaches wherein said plurality of cavities comprises at least 2 cavities in a side by side relationship (see fig. 1).

For claim 7, JP789 as modified by 037 (emphasis on JP789) teaches wherein said container has a plurality of said soil support inserts 3 placed therein. There are two inserts 3 as shown in fig. 1.

For claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the soil support inserts of JP789 as modified by 037 with an overall arcuate configuration, depending on the user's preference to do so because the triangular inserts of JP789 would function just as well.

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For claims 9 & 10, JP789 as modified by 037 teaches wherein said elongated slots are defined by parallel ribs therebetween. Note, the ribs/bridges exist between the slots 31 of JP789 and made of a compliant material . However, JP JP789 as modified by 037 is silent about each of said ribs having an arcuate inner surface to prevent damage to the roots growing therethrough. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the soil support inserts of JP789 as modified by 037 with an overall arcuate configuration, depending on the user's preference to do so because the triangular inserts of JP789 would function just as well.

For claim 11, JP789 as modified by 037 teaches the limitation as explained in the above claims.

For claim 12, JP789 teaches a gardening method comprising the steps of supplying a gardening system comprising a container 1 having a bottom wall and a side wall extending upwardly therefrom, a soil support insert 2-4 spaced from said bottom wall to define a space between said bottom wall and said soil support insert, at least one wall extending downwardly from said soil support member to define a cavity, a plurality of apertures 31 in said downwardly extending wall, water in said container (inherent to water the plant therein), and putting a soil 8 on top. However, JP789 is silent about an air-space between an upper surface of said water and said soil support member, putting a non-soil growing medium within said cavity, placing a vesicular-arbuscular mycorrhizal inoculum on top of said non-soil growing medium and subsequently of said mycorrhizal inoculum.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of putting a non-soil growing medium within said cavity of JP789, depending on what type of plant being grown therein.

037 teaches employing a non-soil growing medium including mycorrhizal fungi. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of placing a vesicular-arbuscular mycorrhizal inoculum on top of said non-soil growing medium and subsequently of said mycorrhizal inoculum as taught by 037 in the gardening system of JP789, depending on what type of plant being grown therein because the fungi can enhance uptake of nutrient by the plant grown therein (abstract of 037).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn